

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION (CINCINNATI)

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| THE WESTERN AND SOUTHERN LIFE<br>INSURANCE COMPANY, <u>et al.</u> | : | CASE NO: 1:11-cv-00576-HJW  |
|   | : |   |
|   | : |   |
| Plaintiffs,   | : | (Judge S. Arthur Spiegel)   |
|   | : |   |
| v.  | : |   |
|   | : |   |
| MORGAN STANLEY MORTGAGE<br>CAPITAL INC., <u>et al.</u> ,          | : | <b>UNOPPOSED MOTION OF DEFENDANT<br/>MERRILL LYNCH, PIERCE, FENNER &amp;<br/>SMITH INCORPORATED FOR A STAY<br/>OF ITS DEADLINE TO RESPOND TO<br/><u>THE COMPLAINT</u></b> |
| Defendants.   | : |   |

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Pursuant to Fed. R. Civ. P. 6(b) and S.D. Ohio Civ. R. 6.1(a), Defendant Merrill Lynch, Pierce, Fenner & Smith Inc. ("MLPFS") moves, without opposition and in the interest of judicial economy, for an Order staying its deadline to answer, move to dismiss, or otherwise respond to the complaint.

Respectfully submitted,

/s/ Charles J. Faruki

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**MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION OF DEFENDANT  
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED FOR A STAY  
OF ITS DEADLINE TO RESPOND TO THE COMPLAINT**

Pursuant to Fed. R. Civ. P. 6(b) and S.D. Ohio Civ. R. 6.1(a), Defendant Merrill Lynch, Pierce, Fenner & Smith Inc. ("MLPFS") moves, without opposition and in the interest of judicial economy, for an Order staying its deadline to answer, move to dismiss, or otherwise respond to the complaint, and further states as follows:

1. On August 22, 2011, Defendants Morgan Stanley Mortgage Capital Inc., Morgan Stanley Capital I Inc., and Morgan Stanley & Co. Incorporated (collectively, "Morgan Stanley Defendants") removed this action from the Court of Common Pleas of Hamilton County. On August 23, 2011, MLPFS filed a joinder to the removal filed by the Morgan Stanley Defendants [Doc. No. 5].

2. On August 26, 2011, Plaintiffs moved to remand this action to the Court of Common Pleas of Hamilton County. Briefing related to Plaintiffs' motion to remand is presently ongoing.

3. On September 14, 2011, the Morgan Stanley Defendants filed an unopposed motion [Doc. No. 20], in which Plaintiffs and the Morgan Stanley Defendants have agreed to stay the Morgan Stanley Defendants' deadline to answer, move to dismiss, or otherwise respond to the complaint until after the Court's resolution of Plaintiffs' motion to remand. Immediately upon the Court's resolution of the motion to remand, Plaintiffs and the Morgan Stanley Defendants have agreed to meet and confer regarding a schedule for the Morgan Stanley Defendants to respond to the complaint.

4. Likewise, pending the Court's approval, Plaintiffs and MLPFS have agreed to stay MLPFS's deadline to answer, move to dismiss, or otherwise respond to the

complaint until after the Court's resolution of Plaintiffs' motion to remand. Immediately upon the Court's resolutions of the motion to remand, Plaintiffs and MLPFS will meet and confer regarding a schedule for MLPFS to respond to the Complaint.

5. On September 15, 2011, this Court granted the unopposed motion filed by the Morgan Stanley Defendants [Doc. No. 21].

6. In light of the unopposed motion previously filed by the Morgan Stanley Defendants [Doc. No. 20] and granted by this Court [Doc. No. 21], this unopposed motion of MLPFS is intended to coordinate the same deadline for all Defendants to answer, move to dismiss, or otherwise respond to the complaint after the Court's resolution of Plaintiffs' motion to remand.

Respectfully submitted,

/s/ Charles J. Faruki

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**CERTIFICATE OF SERVICE**

I certify that on September 16, 2011, I electronically filed the foregoing Unopposed Motion of Defendant Merrill Lynch, Pierce, Fenner & Smith Inc. for a Stay of Its Deadline to Respond to the Complaint with the Clerk of Courts using the CM/ECF system, which will send notification of such filing to CM/ECF participants:

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